

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>8-19-10</u>
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**BENJAMIN MORDUKHAEV, ROBERT DYCE,
MARC BUTCHER, MUSTACH ALI, JORGE AVILA,
IGOR MODIN and MOHAMMAD BUTT, individually
and on behalf of all others similarly situated,**

Plaintiffs,

- against -

**MATTHEW DAUS, RAYMOND SCANLON,
CARMENA SCHWECKE, THE NEW YORK CITY
TAXI AND LIMOUSINE COMMISSION, and THE
CITY OF NEW YORK,**

Defendants.

**REPORT AND
RECOMMENDATION**

09 Civ. 5149 (SHS)(RLE)

To the HONORABLE SIDNEY H. STEIN, U.S.D.J.:

I. INTRODUCTION

Plaintiffs filed their Second Amended Complaint against TLC Chairperson Matthew Daus, TLC Deputy Commissioner Raymond Scanlon, TLC Chief Administrative Law Judge (“ALJ”) Carmena Schwecke, The New York City Taxi and Limousine Commission (“TLC” or “Commission”), and The City of New York (“City”), on July 13, 2009. Plaintiffs filed a Cross Motion for Summary Judgment on September 14, 2009 for Counts 3-12 of the Second Amended Complaint alleging violations of the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and also claim violations of the New York State Constitution, Article 1, § 12. (2d Am. Compl. ¶ 7.) This cross motion was also filed in opposition to Defendants’ Motion to Dismiss. (Doc. No. 13.) Plaintiffs seek an order for injunctive relief directing Defendants to grant the taxi driver license applications of Plaintiffs and those similarly

situated. (*Id.* at 37 ¶ G.) They also seek a judgment declaring the TLC's post-revocation policies and procedures unconstitutional and in violation of state law. (*Id.* ¶¶ B-E.)

Plaintiff Benjamin Mordukhaev filed a separate Motion for Summary Judgment as to Count 2 of the Second Amended Complaint on September 8, 2009. Mordukhaev alleges violations of the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States pursuant to 42 U.S.C. § 1983. (2d Am. Compl. ¶ 168.) He seeks a judgment declaring his taxicab license revocation unconstitutional and an order rescinding his revocation (*Id.* ¶ 167.) He also seeks compensatory and punitive damages. (*Id.* ¶¶ H, I.)

On September 22, 2009, Defendants filed a Memorandum of Law in Opposition to Mordukhaev's Motion for Summary Judgment. On September 30, 2009, Mordukhaev filed a Reply Memorandum of Law in Support of his Motion for Summary Judgment. For the reasons that follow, I recommend that the Mordukhaev's Summary Judgment Motion (Doc. No. 18), and Plaintiffs' Motion for Summary Judgment (Doc. No. 25.) be **DENIED** as moot.

II. DISCUSSION

The relevant facts are set forth in a Report and Recommendation ("Report") issued by the undersigned on August 19, 2010. Defendants had moved to dismiss Plaintiffs' Complaint, and in the Report, the Court recommended that the motion be granted. The instant motions are based on the same complaint. Therefore, I recommend that the Mordukhaev's Summary Judgment Motion (Doc. No. 18), and Plaintiffs' Motion for Summary Judgment (Doc. No. 25.) be **DENIED** as moot for the reason stated in the Report.

Pursuant to Rule 72, Federal Rules of Civil Procedure, the parties shall have fourteen (14) days after being served with a copy of the recommended disposition to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and

served on all adversaries, with extra copies delivered to the chambers of the Honorable Sidney H. Stein, 500 Pearl Street, Room 1010, and to the chambers of the undersigned, 500 Pearl Street, Room 1970. Failure to file timely objections shall constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (*per curiam*); 28 U.S.C. § 636(b)(1) (West Supp. 1995); FED. R. CIV. P. 72, 6(a), 6(d).

Dated: August 19, 2010
New York, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ronald L. Ellis", written over a horizontal line.

The Honorable Ronald L. Ellis
United States Magistrate Judge

Copies of this Report and Recommendation were sent to:

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